

UTAH AIR QUALITY BOARD MEETING
August 1, 2007

FINAL MINUTES

I. Call to Order

Ernest Wessman called the meeting to order at 1:33 p.m.

Board members present:

Ernie Wessman	Jim Horrocks	Rick Sprott
Darrell Smith	Kathy Van Dame	Nan Bunker
Steve Sands		

Excused: Stead Burwell, Wayne Samuelson, Craig Petersen

Executive Secretary: Cheryl Heying

II. Date of the Next Air Quality Board Meetings

September 5, 2007 and October 3, 2007.

III. Approval of the Minutes for July 11, 2007 Board Meeting

Mr. Sprott wanted to clarify on Item IV of the minutes that there are two jobs but not both are on the Board. He wants the minutes to reflect the distinction of the two jobs. Mr. Wessman changed wording on page six of the minutes to be more precise in the introduction of public comment made to the Board.

- Kathy Van Dame moved to approve the minutes as corrected. Steve Sands seconded. The Board approved unanimously.

IV. Motion to Amend Request for Agency Action in Sevier Power Company Appeal. Presented by Fred Nelson.

Mr. Wessman stated that he was recusing himself on issues relating to Sevier Power Company (SPC) and IPP3, and so asked Mr. Horrocks to preside over Items IV and V on today's agenda.

Fred Nelson, of the Attorney General's Office and counsel to the Board, stated the Sierra Club has appealed a permit issued to Sevier Power Company. They submitted a request for agency action and now ask to amend issue #10, which has been presented to the Board. Neither Sevier Power Company nor the Executive Secretary is objecting to this request for amendment. It is Mr. Nelson's recommendation that since a quorum of the Board is not available to vote on this today and a presiding officer, Mr. Horrocks, could approve this change that the Board go forward with this on that basis.

Mr. Horrocks stated that he had reviewed the information that was submitted and believes it is in the best interest of all parties to grant permission to Sierra Club's request for amendment to statement of reason #10. Therefore, Mr. Horrocks would advise the parties to move forward based on that finding. Also, for clarification, that the Board was not ruling on the finding just the ability to hear the arguments.

V. Save Our Air and Resources Petition to Intervene. Presented by Fred Nelson.

Mr. Nelson stated that a petition to intervene and request for agency action has been filed by Save Our Air and Resources (SOAR) and James Kennon and Dick Cumiskey. By rules of the Board a petition to intervene has to be voted on by the Board, and today the Board does not have a quorum of six available members able to vote that have not recused themselves. The Board has scheduled October 1st and 3rd as dates to hear the SPC matter. The amendment to request for agency action just considered on item #10 raises the same issues as is raised in the SOAR petition, which is the question of the provisions of the rules on the 18-month requirement for construction. The Board has received information from the Executive Secretary who is objecting to the substance of the request. It is Mr. Nelson's suggestion that the Board consider including the SOAR petition as part of the October 1st and 3rd hearings because the Board will be looking at the same issues related to that question. If the Board rules on one then the party who is not present for that and not available to participate is going to get a ruling that may affect what they are presenting. If the Board rules that the permit is not valid because of the 18-month issue, then the rest of the hearing may not need to go forward.

The only issue today is the petition to intervene to which there has been no objection. It's just a matter of having the Board vote on that particular petition. It is Mr. Nelson's expectation that since there was no objection, the Board would probably grant that if there was a quorum today. The question is then when to hear the petition to intervene. Based on Mr. Nelson's understanding it may be best to deal with the petition to intervene at the September Board meeting with a quorum of Board members. If there is not a quorum at the September Board meeting, the Board will need to have a special meeting to rule on this as required by rule. In initially looking at the question and reading the pleadings, it appeared to Mr. Nelson that there might not be a question of fact that needed to be heard on this issue. The Board could then go ahead and hear the argument, hear the discussion, take briefing on it, and decide that issue at the September Board meeting. In discussion with David Becker, it is Mr. Nelson's understanding that there may be some question of fact which would require the issue be moved to the October 1st and 3rd dates to hear the matter. The Board needs to facilitate this issue and Mr. Nelson believes that they will need to be heard together in order to be fair to Sierra Club and SOAR. Mr. Nelson then asked for comments on this matter from the parties involved.

Brian Burnett, of Sevier Power Company, stated that they have not objected to the standing of SOAR and that they support the Executive Secretary's motion to dismiss. It was Mr. Burnett hope that the Board could make a determination about the standing issue today. It is SPC's preference to deal with this issue separately at the September Board meeting. One reason would be that it gives SPC an opportunity to free up time at the October 1st and 3rd hearings for other issues and try this issue along with Sierra Club's 18-month issue.

David Becker, of Utah Chapter Sierra Club, stated that they are in agreement with Mr. Burnett and Mr. Nelson in that it makes sense to consolidate SOAR's issue with their item #10. Sierra Club feels that their claim in the amended claim #10 has two parts. One is, was the 18-month review conducted using proper procedures, and was there adequate public notice. The second part of their claim is, according to what was learned in discovery for the SPC plant, was the best available control technology (BACT) determination at the 18-month point proper, should there have been additional controls. With the understanding that Sierra Club has a limited amount of time in October, Mr. Becker believes that many of the issues regarding claim #10 can be addressed in briefing. But Mr. Becker also believes that it is important to have the context of expert witnesses describing what should be done in a BACT analysis so the Board has the background before Sierra Club's claim is heard. Mr. Becker stated that if this is done at the September Board meeting they may end up duplicating live witnesses, including potential expert witnesses. Mr. Becker believes that this could be done as a small part of the October meetings.

Chris Stephens, of the Attorney General's Office and counsel to the Executive Secretary, stated that counsel is largely in agreement with the parties on this. Counsel believes that the Board would benefit in having these issues consolidated. As far as the distinction on any factual questions, the Executive Secretary could put on witnesses from staff that could testify to the work done on this and provide the documentation in discoveries as well. Mr. Stephens believes that this could be done in the confines of the September Board meeting, if the Board chooses to hear this issue at that time.

James Kennon, of SOAR, stated that SOAR does not want to combine their petition with another petition and he suggested the Board hear them on the morning of the September Board meeting. Mr. Kennon feels that this is not a simple matter. They have done research and so would like to have a hearing. They have had an appeal before to which they were not happy with the outcome. They want to present their entire case and not be constrained by time. Mr. Kennon further stated that they would not agree to anything else, that it's too important, and that he feels it has to be a separate hearing.

Mr. Horrocks asked Mr. Kennon if it was correct that SOAR would like an official ruling in regards to whether or not SOAR has standing towards pursuing the arguments for item #10. If so, the Board cannot do that today because there is not a quorum. Mr. Horrocks asked Mr. Kennon to reconsider since all the other parties involved agreed to not oppose SOAR's standing in this particular matter. Mr. Horrocks stated his concern that opinion may change in regards to support for SOAR's standing, if it should end up in a separate hearing which could potentially conflict with the hearing already scheduled.

Mr. Kennon commented that what good is it to have standing and the right to speak, if they cannot speak their concerns. Also, as Sierra Club stated there are other issues involved as well. Mr. Kennon stated that it would take approximately 3 hours to present their evidence to the Board. Mr. Kennon does not feel that they were heard properly at their previous appeal, and he feels that it is not fair to Sierra Club to combine SOAR's presentation with Sierra Club's time.

Mr. Nelson made the point to Mr. Kennon that Sierra Club will be presenting this issue at the October 1st meeting. If the Board makes a decision on this issue before the October 1st meeting, it will have a dramatic effect from a precedence standpoint with Mr. Kennon having the opportunity to participate. Mr. Kennon needs to consider that in how he wants to handle the matter. Once the Board decides on the issues raised, the issues will no longer be available for consideration by the Board. It was suggested by Mr. Nelson that Mr. Kennon think about timing and when SOAR would like to participate. Mr. Nelson then recommended to Mr. Horrocks, as presiding officer, that Board members check their availability for a conference call or their availability for the September Board meeting. After consideration of the comments heard today, the Board will need to find a time when the Board can meet on the petition to intervene, make a decision on that, and then set a schedule.

Mr. Horrocks asked counsel for the Executive Secretary who provided arguments in consideration as to whether intervention was appropriate based on the prior hearing. Previously counsel commented that they had no objections to the intervention and so does the clarification of SOAR's request today cast any new light on what was said previously.

Mr. Stephens stated that he believes it would not make a difference because none of the parties have opposed standing regardless of when the hearing is held. It is counsel's argument to go to the substance of the claim that has been raised; the merits of the request for agency action. Standing is not a constructive argument to get into now. This has gone through a protracted process before and Mr. Stephens believes that it is not in the parties involved best interest and that is why he believes there is no opposition.

Mr. Burnett stated that because SOAR has standing doesn't mean that they should be in the proceeding. Mr. Burnett believes they had their chance at a hearing in Richfield and that the issues are moot. Since the parties involved in the October 1st and 3rd meetings will be constrained by time, Mr. Burnett believes that Mr. Kennon's best chance for time will be at the September Board meeting.

Mr. Kennon commented that he wanted to make it clear that SOAR did not have a hearing because it is a different organization. As far as the time constraints mentioned earlier, this is a coal power plant that is being discussed and time has got to be taken. Mr. Kennon further mentioned that on some issues SOAR has taken a separate track than Sierra Club. SOAR knows their options and would like to settle this issue, and they request a separate hearing.

Mr. Horrocks stated that the Board will add this issue to the agenda for the September Board meeting. The Board will address the issue of intervention and based on that finding, will determine how to handle any follow-up that will be required. It was added that if a quorum was not available for the September Board meeting, then arrangements for a separate teleconference will be needed. In addition, it was noted by Mr. Nelson that since Items IV and V were able to be dealt with by the presiding officer, Mr. Horrocks, a motion was not needed to add this issue to the September Board meeting.

Mr. Wessman recognized David Becker, representing Western Resource Advocates of the Utah Chapter of the Sierra Club, who requested to make a public comment related to the notice of appearance of Intermountain Power Project (IPP) Unit 3 Development Committee in the Intermountain Power Service Corporation (IPSC) matter. Mr. Wessman stated that because he has a business interest with IPP Unit 3 Mr. Horrocks would facilitate questions and comments to this request.

Mr. Becker stated that Sierra Club had received a notice of appearance concerning the IPP matter from Michael Keller and Mathew McNulty on behalf of IPP Unit 3 Development Committee. Mr. Becker explained that on July 20th Holme Roberts & Owen, former counsel for IPSC, filed a notice of withdrawal of counsel, and so for about 1 ½ weeks IPSC has not been represented. IPSC is the permit holder and listed as the owner of the Approval Order that is being contested here in the IPSC matter. The notice of appearance on behalf of IPP Unit 3 Development Committee is not a party to the IPSC proceedings to Mr. Becker's knowledge. Mr. Becker then passed out to Board members a newspaper article from the Salt Lake Tribune to which Intermountain Power Agency (IPA), owners of Units 1 and 2 at IPP, makes public that they do not support Unit 3. A copy of an interrogatory was then passed out by Mr. Becker which asks for the relationship between IPA, IPSC, Utah Associated Municipal Power Systems (UAMPS), and Unit 3. Some of Mr. Becker's concerns are if IPP Unit 3 Development Committee is a new entity why have they not petitioned to intervene and shown that they have standing; if IPSC doesn't want this unit what is the purpose of going forward with this permit; and if this is a different entity what does that implicate in terms of the existing permit versus the requirement to get a new permit. Mr. Becker stated that he wanted to find out the relationship between all the parties and that the Board also needs to know the relationship.

Mr. Horrocks asked Ms. Heying if DAQ had any contact with IPSC with regard to the permit. Have they made a request to withdraw the permit? To which Mr. Nelson responded that it might be best to have Mr. Keller comment.

Michael Keller, of VanCott, stated that he did file on behalf of Unit 3 Development Committee which is not a new entity. Mr. Keller further commented that if any party has an objection or questions as to who they are, that objection should be handled in the normal course and necessary papers filed. As far as the discovery, Mr. Keller stated that they had explained who's who previously but would supplement the discovery of request. If there is an objection to discovery responses, then that should be handled in the ordinary course.

Ms. Van Dame asked for an explanation of the appearance of counsel. To which Mr. Keller answered that Mr. Rawson withdrew as counsel and so Mr. Keller was appearing; it's just a change in lawyers.

VI. Propose for Public Comment: Amend R307-415 Applicability. Presented by Tim Andrus.

Tim Andrus, Environmental Engineer at DAQ, stated UAC R307-415-4 specifies applicability of the Title V permitting program in Utah. In sections R307-415-4(1)(b) and (c), the program is applied to all sources, including area sources subject to a New Source Performance Standard (NSPS), National Emission Standard for Hazardous Air Pollutants (NESHAP) or Maximum Achievable Control Technology (MACT) standard.

EPA has been promulgating NSPS and MACT rules that specifically exempt area sources from Title V permitting obligations, beginning with the exemption of five area source categories in December 2005 (70 FR 75320, 12/19/2005). These particular exemptions were adopted into R307-415(2)(c) in 2006.

EPA has continued to exempt area sources from Title V in subsequent NSPS and MACT rulemakings. It appears that this is EPA's chosen approach to implement its authority under Part 70 to exempt area sources from Title V.

This presents two options for handling these regulations under R307-415. Staff could modify R307-415-4(2)(c) each time EPA promulgates a new regulation containing the exemption language, or staff can modify R307-415-4(2)(c) with a general exemption for area sources subject to any rule containing EPA's exemption. Staff has chosen to propose the latter approach since it requires fewer resources and provides a more certain position for area sources. This approach to exempting sources also parallels the approach to including sources in R307-415-4(1).

Staff recommends that R307-415-4 be proposed for public comment. A copy of the proposal is attached.

- Darrell Smith made the motion to propose for public comment to amend R307-415 Applicability. Nan Bunker seconded. The Board approved unanimously.

VII. Informational Items.

Ms. Heying gave the following DAQ update. Bryce Bird was introduced as the new Planning Branch Manager and will continue to manage the Air Monitoring Center. Ms. Heying and Mr. Sprott have been meeting jointly with Physicians for Healthy Environment and Moms for Clean Air several times over the last couple of weeks and will continue to do so. They do not have regularly scheduled meetings but have been meeting in the early mornings and evenings. These meetings have provided the groups with updates and education on what DAQ does.

A. Update on the Demolition Plan for the Key Bank Tower. Presented by Bryce Bird.

Bryce Bird, Planning Branch Manager at DAQ, stated that at the April Board meeting the Board approved a variance for the demolition of the Key Bank Tower as part of the block 76 renovation of downtown Salt Lake City. As part of the variance request to allow an exceedance of the opacity standard during the time of the demolition the Board also requested that staff continue to work with the parties and the city to ensure that the planning process is done well and addresses environmental concerns. There have been several revisions to the dust control

plan and the demolition implementation plan that is being worked on. The demolition is scheduled to proceed on August 18th at 6:00 a.m. There are steps and decisions that will be made before that time to make sure the criteria are still in place that the demolition can be done safely and that the meteorological conditions are such that the pollutant will rise above the dust impact zone and fall directly down. There are some key issues that DAQ has worked with them on. One is the criteria for re-entry. They have amended their plan to include the building owners that are impacted, making the decision as to when it is clean. The city will be making the decision on the city streets to allow re-entry. Other additions to the plan include the runoff considerations with water quality regulations. They will be covering storm drains while they do the washing and street sweeping.

When staff reviewed and presented to the Board the initial variance request for a demolition project at Provo, one of the big questions was; "do we have any data to support their position that there would not be any impacts." So with this demolition project there is going to be an air monitoring plan which will include running air monitoring samplers for five days prior to demolition, through the demolition process, and then five days afterwards. Also the demolition contractor will be setting up 60 passive samplers to collect debris from the demolition and they will then analyze that for hazardous constituents and also be able to verify what they presented as their plume modeling or what they assumed for their impacts. Following demolition, within 90 days, their contractor will provide the results to the Division and the Board will be updated at a future Board meeting.

Ms. Van Dame asked who is the ultimate go and no go authority. Mr. Bird answered that it will be the Salt Lake Fire Department and followed with the check-off steps. The first is the weather check; making sure the weather criteria is being met. Second is the air space check; making sure there are no aircraft over the area. Third will be the all clear security clearance of block 76. Fourth is the all clear of the bank tower. Fifth is the all clear of the city streets and the dust impact zone. Sixth is the clearance for the building protection for neighboring buildings. The final check is the fire department giving the all clear that all checks have been met and that the area is safe and secure and the demolition can proceed.

Ms. Van Dame asked what kind of outreach has been done or is planned for the neighborhood. Mr. Bird answered as part of the demolition plan that door to door notification has started for people in the dust impact zone. The dust impact zone is approximately the 4 block radius around the block 76. It is a smaller area, but it is the buildings that they have identified as being occupied. They have times in place to provide movement for people who might not be able to move themselves.

Mr. Horrocks asked how the occupants of hotels in the 4 block radius will be notified and will they be informed that a 6:00 a.m. event will be happening in the morning. Mr. Smith also asked how they expect to handle spectators. Mr. Bird responded that within the dust impact zone, part of the plan is to work with identified building owners to shut down and seal off ventilation systems prior to the demolition. In addition they have worked with each building owner individually to develop a plan to make sure there is no possibility for flying debris within that area. Another question that Mr. Bird has received is what will DAQ be doing with the all clear. DAQ will have access to the area during the demolition. There will be optical particle counters so that DAQ will have an idea of the ambient levels of particles in the air. As far as the hazardous constituents, that analysis will not be available for 2-3 days after. The area of the dust impact zone will be coordinated off and no one will be allowed in that area. As part of the plan, there will be running cameras throughout the demolition process. DAQ is making

notification to encourage people to avoid the area and that the best place to watch the demolition is the television coverage.

- B. Compliance. Presented by Jay Morris and Harold Burge.**
- C. Air Toxics. Presented by Robert Ford.**
- D. Monitoring. Presented by Bob Dalley.**

Mr. Dalley updated the Board on the latest air monitoring data.

Ms. Van Dame wanted to know the meaning of NW on the website's ozone section. Mr. Dalley responded that it is data collected through a cooperative agreement with the northwest band of the Shoshone tribe in the Washakie/Tremonton area.

Ms. Van Dame asked if the monitoring review plan has been finalized and submitted to the EPA. To which Mr. Dalley responded that it has not been finalized at this point.

Mr. Sands asked if there is intent to file an exceptional event on the ozone graphs. Ms. Heying stated there is a lot of information to gather and that a final decision on what to flag has not been made at this time.

Meeting was adjourned at 2:30 p.m.